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McCarthy Falls Back on The Lunatic Fringe

Whether in desperation or self-destructive folly, McCarthy has sealed his own fate by the type of tactics he is using in the Senate. The 19-page pink-bound pamphlet of photostatic reproductions from the *Daily Worker* with which he plastered the Senate chamber represented about as silly a move as he could have chosen. Even his Senate supporters were appalled and the heading on the pamphlet, "Throw The Bum Out," was too apt for comfort. It is not dignified for a Senator to advertise the fact that someone has called him a bum. It is especially maladroit in a situation where he is about to be censured for bad manners and boorish conduct, i.e. for being exactly what the *Worker* called him.

The eulogies for the late Senator Hunt of Wyoming as the censure debate opened did not help McCarthy. They served to remind Senators of a colleague who was driven to his death by threats of political blackmail, involving smears against his family. The charge that the Watkins committee and the Senate itself were tools of a Communist conspiracy was cut from the same cloth. The simple issue is whether the Senate will permit McCarthy to use against its members and its integrity as an institution exactly the same kind of methods he has used to terrorize the State Department and the Army and other branches of the government. The answer is that it will not do so; the leaders of both parties are agreed on censure. McCarthy has cut his ties with the conservatives and must fall back upon the lunatic fringe where he belongs.

His coming defeat is given added importance because it will also constitute a defeat for the Fascist-minded wing of the Catholic hierarchy. Cardinal Spellman, who manages to

embrace Franco and McCarthy in his episcopal affections, is going to have to disown that Monsignor who charged that a \$5,000,000 fund has been raised to drive McCarthy from the Senate because of his "Catholic ideals." A man who encourages false witness, slanders without proof, and runs away from serious questions about his financial speculations is hardly the embodiment of any religious ideal. The question raised with Monsignor Martin by the seven Cornell faculty members, "Do you really want the American people to believe that the Catholic Church identifies the widespread concern over preservation of the Bill of Rights with opposition to Catholic ideals?" will reverberate until McCarthy is disowned.

It is our good fortune that we see only a caricature of Fascism. The screwballs coming into town with such people as Rabbi Schultz to support McCarthy are a poor copy of a March on Rome. McCarthy's declaration that the nation's fate is tied to his own would come fittingly from Der Fuehrer or Il Duce but just sounds a little wacky from an American imitator who has grown too big for his britches. The ultimate significance of what is happening is simply that American big business, unlike German or Italian, is not in the decadent and frightened state where it needs to call in psychopathic and gangster elements to protect it, nor is the American middle class in any mood for Fascist adventures. McCarthy's decline indicates that American-style Fascism, which masquerades as "hard" anti-Communism, has passed its peak. "Others who might otherwise have been enlisted," as McCarthy said, "will be discouraged from joining us." That is true.

That B-29 Incident—An Opportunity for Peace

Those who are interpreting the latest B-29 incident as a deliberate attempt by the Russians to make the U.S. lose face in the Orient are talking nonsense. If Moscow was thinking in such terms, it would not be going out of its way to woo American good will and to moderate past anti-American propaganda. The tone of the November 7 celebration was one of peace, not only toward Western Europe but toward the U.S. as well. The B-29 affair was an accident. Neither side has a monopoly on mistakes and on trigger-happy airmen. My guess is that those responsible for shooting down the U.S. B-29 on November 7 are in plenty of trouble.

If the Russians are well-advised, they will take advantage of the incident for peace. The President went out of his way in his speech to the National Council of Catholic Women next day and again at his press conference on Wednesday to take a conciliatory attitude in marked contrast to his own Senate majority leader, Knowland, and the Congressional fire-eaters.

A Russian offer to permit a neutral commission to investigate these border incidents and to interrogate the airmen of both sides, coupled with a promise in advance to accept the decisions of such a commission, would make a major contribution to better relations with the U.S. Such an offer should be accompanied with a promise, if the U.S. would do the same, to punish any airmen held accountable and to pay damages.

If it is true, as the Russians have charged, that U.S. planes have been engaging in photographic reconnaissance of Soviet territory from the borders of the U.S.S.R., an international commission of inquiry would be a good forum in which to air such complaints. On the other hand, if the Soviets, as seems reasonable to believe, have sometimes also had too quick-on-the-trigger airmen, nothing would do more to improve the atmosphere than to determine the truth and punish those responsible.

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The New Supreme Court Justice and the "Clear and Present Danger" Doctrine

No Sign of A New Marshall or A Harlan in John Marshall Harlan

Tristram Shandy's father (who believed in the power of a name and therefore baptized his son Hermes Trismegistus Shandy) would have been delighted with the choice of John Marshall Harlan for the Supreme Court. A man bearing the names of both John Marshall and John Marshall Harlan would have seemed to him fated from the baptismal font for the highest bench.

But the bearer of such fragrant names need not necessarily be a judicial rose. There is no reason at the moment to expect that the new appointee will turn out to have the stature of a Marshall. There is good reason to believe that he will not prove to have that noble passion for minority rights and civil liberties which made his grandfather and namesake one of the greatest libertarian judges ever to sit (1877 to 1911) on the U.S. Supreme Court.

The grandfather's glory colors the view of the grandson. It is unconsciously assumed that he will see the segregation issue as the grandfather did in his anti Jim Crow dissent in *Plessy v. Ferguson*. Perhaps he will. But in other respects parallels are already foreclosed.

Last Wednesday, for example, in welcoming the new appointment, the *Chicago Tribune* recalled that on its Tribune Tower are inscribed the words of Justice Harlan's famous dissent in *Patterson v. Colorado*, "I cannot assent to that view, if it be meant that the legislature may impair or abridge the rights of a free press and of free speech whenever it thinks that the public welfare required that to be done. The public welfare cannot override constitutional privileges . . ." Precisely the opposite view has already been urged by the grandson.

Three weeks ago on the Circuit Court of Appeals in New York, Judge Harlan wrote the opinion which upheld the conviction of Elizabeth Gurley Flynn and the "second string" Communist leaders under the Smith Act. The elder Harlan would have thought a peacetime sedition act and a conviction under it for "conspiracy to advocate" completely un-American monstrosities.

But the grandson in a drearily written and obscurely reasoned opinion not only upheld the convictions but put forward a new interpretation of the "clear and present danger" rule which further undermines the First Amendment. As we pointed out in the *Weekly* for October 25, Judge Harlan ruled in effect that the danger need not be either "clear" or "present" but only "potential" to warrant Congress interfering with free speech and free press.

Judge Harlan wrote that the rule "connotes no more than that the setting in which the defendants have conspired is such as to lead reasonably to the conclusion that their teachings may result in an attempt at overthrow." This takes us back to the law of constructive treason in the worst days of the English common law.*

It is always hazardous to be dogmatic about what a man will do once he is on the Supreme Court. All of us left of center protested in 1930 when Hoover appointed Charles Evans Hughes only to see that "Wall Street corporation lawyer" write some of the best decisions in defense of fundamental rights ever to come from the Court. But there is little reason to expect any similar surprise from this new recruit from the highest reaches of the New York corporate bar.

A prime factor in the appointment seems to have been the new Judge's personal acquaintance with Ike in war-time London when Harlan was an Air Force officer. The best that can be said of him is that unlike some of the cronies Truman put on the Circuit and Supreme Court benches, Harlan is at least a lawyer of ability and reputation. As an unknown quantity also, he seems preferable to a Dewey, a Dulles or a Brownell.

Had Judge Harlan written an opinion on the Circuit Court which threatened property rights as his Flynn opinion threatens freedom of political expression, he would of course be subjected to sharp questioning by the Senate Judiciary Committee and have trouble getting himself confirmed. But who cares about the First Amendment! We'll be surprised if the committee even bothers to hold a hearing.

* Judge Harlan did show a laudable independence of the government day after his appointment when he joined in rejecting a motion which would have revoked bail for Miss Flynn and her co-defendants.

For Chicago Readers

Lecture Note: I. F. Stone (and Carey McWilliams of *The Nation*) will speak on "The True Nature of Internal Security and How It Is Threatened" at 2 p.m. on Saturday, November 20, in the Congress Hotel, Chicago, during the National Lawyers Guild convention. There will be a panel discussion under the chairmanship of Prof. Malcolm R. Sharp. The public is invited, as it also is to hear Alvarez del Vayo on the prospects for co-existence at the Guild's annual banquet Saturday night.

The Ill Effects Can't Last Longer Than 5,000 Years

MR. ARTHUR HENDERSON (Rowley Regis and Tipton, Lab.) asked the Prime Minister whether, in view of the further nuclear explosions in Russian territory, he would propose to President Eisenhower and Mr. Malenkov that all nuclear and atomic explosions should be suspended pending the outcome of the subcommittee of the United Nations Disarmament Commission.

SIR WINSTON CHURCHILL (Woodford, Cons.)—We should all be much happier if there were no need for nuclear and atomic explosions. There are several proposals regarding these weapons before the United Nations; it is there that a solution should be sought at the present time, and I am not at present persuaded that Mr. Henderson's suggestion would aid the solution.

MR. HENDERSON said the suspension of nuclear and atomic explosions would greatly lessen the suspicion and mistrust which was making the achievement of a world disarmament agreement so difficult.

SIR WINSTON CHURCHILL replied that he was not convinced that a cessation, wholly or partly, of those explosions would be best achieved by our intervention, or by his personal intervention, at the present time.

VISCOUNT HINCHINGBROOKE (South Dorset, Cons.) asked whether the Prime Minister would be prepared to make clear, at some

suitable time, his attitude on the question of a treaty or pact of renunciation by the leading world powers on the first use of the atomic or hydrogen bomb.

SIR WINSTON CHURCHILL said he considered that should be considered along with all other proposals to lift the cloud of peril from the world.

MR. PHILIP NOEL-BAKER (Derby South, Lab.) asked whether that suggestion had not been embodied in the Anglo-French memorandum which the United Nations Commission was now considering.

SIR WINSTON CHURCHILL. That is very good.

MR. PAGET (Northampton, Lab.) asked how many of those explosions it would take to make the atmosphere lethal, and whether they were cumulative.

SIR WINSTON CHURCHILL said he believed they were cumulative, and certainly an undue number of them might have very serious effects. He was informed, however, that 5,000 years was about the limit of the time during which the atmosphere would be afflicted.

There was some laughter at this, and Sir Winston Churchill added that he did not mean to treat in a facetious manner what was perpetually in everybody's mind.

—Parliamentary Report, House of Commons, Nov. 2

White House Leaks The Story: How Ike Vetoed Bombing of China

(Continued from Page One)

We would never stand for Russian planes coming as close to our borders as our planes have been coming to Soviet territory. Fifteen miles is very little in the days when planes make 600 to 700 miles an hour. General Eisenhower has the good will in the current atmosphere to suggest that our planes had been operating in disputed territory. Were Moscow to match this with an equally conciliatory statement, something might be achieved.

The situation here is this: the election returns are susceptible to any number of interpretations, none very substantial. The White House staff believes (1) that but for Eisenhower's last-minute intervention there might have been a Democratic landslide and (2) that it was the peace issue which prevented a Republican debacle. Whether true or not, it has strengthened the President's very genuine personal desire for peace and created a more favorable situation than existed before. Ike believes that he may win in 1956 if he can show progress toward world peace.

An index of what is going on was provided by the "leak" to the *Washington Post* from the White House Monday of a sensational story. This said that in the Quemoy affair Eisen-

hower vetoed a 3-1 recommendation from the Joint Chiefs of Staff, endorsed by Dulles, to allow Chiang Kai-shek to bomb inland China and if there were an attack on Quemoy to permit American planes to join in the bombing. Admirals Radford and Carney, and Air Force Chief of Staff General Twining favored the recommendations. Ridgway, as in the case of Indo-China, was the one voice on the JCS against intervention. So was then Undersecretary of State Walter Bedell Smith. And oddly enough in this case, according to the *Washington Post*, so was Nixon, who felt such an attack would undercut the G.O.P. "peace" campaign.

Chalmers Roberts, who wrote the *Post* story, as he did its earlier expose of the Indo-China affair, reported "the Quemoy affair has spurred the President to seek a way out of the impasse of American policy in Asia in relation to Red China. This is what has been behind Mr. Eisenhower's recent foreign policy statements with their strong accent on the search for peace." Ike denied at press conference that Chiang had been "ordered" to desist from attacks on the mainland; he did not deny that Chiang had in fact been "requested" to do so. Surely in this juncture, perhaps through Britain or India, new progress toward settlement may be achieved.

The Teapot Dome of the 1956 Campaign: The biggest issue shaping up for 1956, and one which threatens to ruin the Republicans, is the Dixon-Yates deal. Only the surface has yet been scratched and when the full story is known it is likely to wreck several members of the President's official family, including the man on whom he most relies in atomic matters, Lewis Strauss. This is not meant to imply that Strauss has done anything illegal, but that his rightist anti public power preconceptions have led him to run interference enthusiastically for one of the strangest contracts and business affairs in government annals. Some smart promoters have thought to make hay from the G.O.P. hatred of TVA, the symbol of the first successful large-scale experiment in socialist methods and regional planning in American history.

Spy Sensation Fizzles: That pre-election spy sensation, the Peterson case, which was wrapped in so much mystery, began to fizzle out last week once the government was forced to file a bill of particulars. The Chinese radio code he was alleged to have unlawfully possessed at his home can be purchased at the Chinese embassy here for commercial use, and the army decoding machine he is charged with having in his home can also be purchased (it turns out) from Army surplus authorities. He is also accused of having taken notes on the government's success in breaking the Dutch secret code, but is not alleged to have passed this information on to the Dutch authorities. By the time this case gets to trial, it promises to be a considerably marked-down sensation.

Luce's Disappointment in Toynbee: Although the Russian revolution occurred in one of the world's most religious countries and the largest Communist party of the West is in Catholic Italy, some people have been sold the idea that religion insulates people's minds against communism. As long as Arnold Toynbee preached a kind of Christian eschatology in history, he was their pet. But now that Toynbee in his

final volumes and last week here at the National Press Club preaches co-existence, he has lost favor. Thus *Life*, which dabbles constantly and nauseatingly in a fake religiosity, said bitterly of him in its issue of November 8, "In his practical advice to his fellow mortals, Toynbee can be as shallow and commonplace as the next pundit." *Life* seems to object even to co-existence with other religions, deploring "an exaggerated respect for that of others." It says "Great actions are now required of us" (an atomic war?) and wants no faint-hearts interfering with emotional mobilization.

Fuchs and the H-Bomb: A valuable aid in deflating spy hysteria is the article on "Fear and Information" in the November issue of the *Bulletin of the Atomic Scientists* by L. W. Nordheim, a theoretical physicist who was director of the physics laboratory at Clinton and adviser to Los Alamos. Nordheim was present at the famous 1946 conference on the H-bomb which Klaus Fuchs also attended. While not disparaging the need for security, Nordheim feels that "blabbing" is a greater menace than espionage and that we overestimate what can be stolen in the way of secrets. Of the successful Russian thermonuclear explosion in 1953, Nordheim writes, "From what we know of it, this device clearly represents the result of an independent development of their own, which may or may not have been started before our great debate at the end of 1949, but certainly not much later. Considering the time factors involved, it simply cannot have been the outcome of treasonable transmittal of information from our side."

Guess Who, Or How Unconscious Can A Senator Get: "Like Thomas Jefferson he waged an unrelenting war on all forms of tyranny over the minds of men. He championed unpopular causes and espoused unorthodox views regardless of political consequences. He insisted on the same right for others."—*Tribute to McCarran by McCarthy, Senate, last Tuesday.*

A Teacher of Philosophy in a Well Known College Writes—

In a letter asking that we send another philosophy teacher a sample copy of our October 11 issue on the Hunter College trials "... and may I say I know of no publication in America today more useful to educators who will take advantage of it than *I. F. Stone's Weekly*. The ethics involved in your choice of coverage and in your comment, and the adequate documentation, make it inval-

uable. I regularly direct my students in social ethics to it, and am in process of persuading the members of the local American Civil Liberties Union here that they cannot afford to be without it."

Our thanks to that kind reader. Why not help us reach others by sending a gift subscription today to a friend, and by using the blank on the reverse side to get your renewal in early. —I. F. STONE

They Finally Got John Paton Davies—On The Ninth Try

The Need for A Double Jeopardy Clause in Loyalty Proceedings

John Paton Davies, Jr., was tried nine times on loyalty charges, and finally cashiered for "indiscretion" on the ninth try. John Stewart Service had been cleared once by a grand jury and six times by the State Department Loyalty Security Board when he was fired—on the eighth try. John Carter Vincent had been cleared three times when he was finally "retired" on the fourth turn round.

Just by the law of averages any government can get any man if it can try and try again. The evil is not limited to government officials. Edward U. Condon, once head of the Bureau of Standards but now in private employment, is being put through the hoops of another investigation after having been four times cleared.

William W. Remington, after being cleared in loyalty proceedings, was tried for perjury. When the conviction was reversed the government tried him again—this time on the ground that he had lied in the course of his first trial.

Harry Bridges, whom the government has been trying to deport since he led the San Francisco waterfront strike in 1934, is now the subject of a fifth try by the government, in the guise of a suit for denaturalization. But substantially it is the same case the government lost four times before.

In various ways, by various subterfuges, the government is violating the spirit if not the letter of one of the most ancient safeguards of the Bill of Rights. This was designed to save people from the pain, expense and risk of being prosecuted, or sued, over and over again for the same offense—until the desired conviction was obtained. Without it, just by the law of averages, any government can eventually "get" any man.

The provision in question is that part of the Fifth amendment which says no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." This is the famous "double jeopardy" clause which is supposed to prevent the government from trying or punishing any man a second time for the same offense.

Of all the provisions of the Bill of Rights, none is older than this. It was solidly established in the common law as

far back as the days when Norman French was still the language of the courts.

Said an early Federal decision (42 Fed. 590), "we will find no principle of the common law grounded upon the rock of the Magna Charta more firmly rooted than that no man shall be twice vexed with prosecutions for the same offense." Another early State decision (17 Pa. 126) said the "right not to be put in jeopardy a second time for the same cause is as sacred as the right of trial by jury, and is guarded with as much care by the common law and the Constitution."

A committee of lawyers would perform a public service if they made a study of the way this safeguard is being eroded in contemporary political prosecutions, and suggested some means of extending it to loyalty proceedings.

Ostensibly these are purely administrative and carry no penalty and are therefore outside the scope of the "double jeopardy" clause. But in fact discharge for disloyalty is more serious than many types of criminal convictions; lives and careers are blasted forever.

A Choice of Fictions

While the law acquiesces in the fiction that such proceedings are not serious enough to warrant the protection of the double jeopardy clause, apologists for what is happening urge that loyalty proceedings are *too serious* to be accorded constitutional safeguards.

Thus the *New York Herald Tribune*, approving the Davies ouster, said editorially (Nov. 7), "To provide maximum safeguards against infiltration, subversion and error, doubts of the reliability of a government servant are to be resolved in favor of national security, rather than of the individual concerned."

This view threatens to reverse centuries of struggle. Had it prevailed, there would have been no Bill of Rights at all. The excuse of "national security," the harsh treatment of "subversion and error," the relegation to secondary place of individual rights and justice—these were the familiar standards by which in earlier times heretics were burned for the good of society and their own presumed salvation.

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